

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JUAN DOMINGO RAMIREZ, #2303422

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:22cv679

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson. Although styled as a writ of habeas corpus pursuant to 28 U.S.C. § 2241, the Magistrate Judge construed Petitioner's petition for writ of habeas corpus as one seeking relief under 28 U.S.C. § 2254 and ordered Petitioner to either (1) notify the Court he did not wish to have his petition construed as a § 2254 petition, or (2) if he wished to proceed with a § 2254 petition, complete the § 2254 form and submit it to the Court and either pay the \$5.00 filing fee or submit an application to proceed *in forma pauperis*. (Dkt. ##5, 8). When Petitioner failed to comply with the orders, the Magistrate Judge issued a Report and Recommendation (Dkt. #10) concluding that the petition for writ of habeas corpus should be dismissed without prejudice for failure to prosecute.

Petitioner filed objections to the Report. (Dkt. #12). In the objections, Petitioner objects to the Magistrate Judge's re-characterization of his petition for writ of habeas corpus from a § 2241 action to a § 2254 action. He also complains that the Magistrate Judge did not address the merits of his habeas petition. After filing his objections, Petitioner paid the \$5.00 filing fee but did not submit a completed § 2254 form to the Court. The Magistrate Judge gave Petitioner one more opportunity to either (1) notify the Court he did not wish to have his petition construed as a § 2254 petition and to withdraw the documents, or (2) complete the § 2254 form and submit it to the Court

if he wished to proceed with a § 2254 petition. (Dkt. #13). Again, Petitioner has failed to comply with the Magistrate Judge's Order. Instead, Petitioner filed an "Objection Notice" (Dkt. #15) in which he continues to object to the Magistrate Judge's re-characterization of his habeas petition from a § 2241 action to a § 2254 action. Petitioner also argues the merits of his habeas claims and asserts that the habeas petition must proceed pursuant to § 2241.

The Court agrees with the Magistrate Judge that, because Petitioner is challenging the validity of his Hopkins County, Texas conviction, his petition is one seeking relief pursuant to § 2254, and not § 2241. *See* 28 U.S.C. § 2254(a); *Pleasant v. Texas*, 134 F.3d 1256, 1258 n.3 (5th Cir. 1998). As such, the Magistrate Judge properly ordered Petitioner to either (1) notify the Court he did not wish to have his petition construed as a § 2254 petition and to withdraw the documents, or (2) complete the § 2254 form fully and legibly and submit it to the Court if he wished to proceed with a § 2254 petition.¹ Despite being given multiple opportunities to comply with the Magistrate Judge's orders, Petitioner has failed to do so. Thus, the Court finds that the Magistrate Judge properly recommended that the case be dismissed for failure to prosecute. It follows that, because the Magistrate Judge recommended that the petition be dismissed for failure to prosecute, she did not address the merits of Petitioner's habeas claims.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby


¹ In each order, the Magistrate Judge properly advised Petitioner that such re characterization means any future § 2254 petitions will be subject to restrictions on "second or successive" § 2254 petitions. (Dkt. ##5, 8, 13). *See Castro v. United States*, 540 U.S. 375 (2003).

adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** the petition for a writ of habeas corpus is **DISMISSED** without prejudice.

It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 26th day of May, 2023.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE